

Order

**Michigan Supreme Court
Lansing, Michigan**

May 19, 2006

Clifford W. Taylor,
Chief Justice

129672

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ALFRED VILLADSEN, DONALD
VILLADSEN, MARILYN VILLADSEN,
and JACK MICKEVICH,
Plaintiffs/Third-Party
Defendants-Appellants,

v

SC: 129672
COA: 255955
Mason CC: 02-000348-CH

MASON COUNTY ROAD COMMISSION,
Defendant/Third-Party
Plaintiff-Appellee,

and

SHERMAN TOWNSHIP,
Defendant/Third-Party
Plaintiff,

and

DEPARTMENT OF NATURAL
RESOURCES and MASON COUNTY
DRAIN COMMISSIONER,
Third-Party Defendants.

On order of the Court, the application for leave to appeal the July 19, 2005 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we AFFIRM the decisions of the Court of Appeals and the Mason Circuit Court but do so for reasons other than those stated by the Court of Appeals. The evidence shows that the strip of land at issue was, and is, one portion of a road that was an established public road by the 1930s. There is no dispute that the road had long existed by then. There is evidence of township ownership as early as the early 1900s. The road runs in a fairly straight fashion for approximately 20 miles, and runs along a section line for the approximately one mile that it traverses or crosses plaintiffs' properties. An aerial photograph from the 1930s shows the course of the road, and there is evidence of a 1915 deed conveying to the township, "for highway purposes,"

approximately one-half of the strip of road presently in dispute. The parties and the lower courts were unnecessarily concerned with evidence regarding use and maintenance of the road *after* the time when it is clear a public road had already been established. The highway-by-user statute, MCL 221.20, allows public highways to be *established* under a theory of implied dedication. *City of Kentwood v Sommerdyke Estate*, 458 Mich 642, 650-656 (1998). The evidence pertaining to the use and partial disrepair of the road after the public road was established was irrelevant to whether a highway by user was established.

CAVANAGH and KELLY, JJ., would grant leave to appeal.



d0516

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 19, 2006

A handwritten signature in cursive script that reads "Corbin R. Davis".

Clerk